

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

MICHAEL S. HOSKINS,

Plaintiff,

v.

Case No. 18-C-413

OFFICER HOLZHUETER, et al.,

Defendants.

DECISION AND ORDER

This matter comes before the court on pro se Plaintiff Michael Hoskins' Motion to File an Amended Complaint (ECF No. 55) and Motion to Amend the Complaint (ECF No. 54). After reviewing the January 25, 2018 recording of his cell, Hoskins seeks to add Officer Chamberlain to the complaint as a defendant. Hoskins allegations against Officer Chamberlain in his Motion to Amend the Complaint mirror his allegations against Officer Buboltz in his first amended complaint—that Officer Chamberlain allegedly used unnecessary force while stripping Hoskins out of his clothes, including his underwear, resulting in bleeding and bruising to Hoskins' groin.

Hoskins' previous attempt to amend his complaint and add Officer Chamberlain was denied because he failed to attach the proposed amended pleadings to his motion pursuant to Civil L.R. 15(b). ECF No. 53. Although Hoskins attached a proposed amended complaint to his Motion to File an Amended Complaint this time, the attached complaint itself makes no mention of Officer Chamberlain and appears to be a copy of Hoskins' first amended complaint previously filed on August 14, 2018. ECF Nos. 35, 55-1. Instead, Hoskins only sets forth his allegations against Officer Chamberlain in his Motion to Amend the Complaint.

Rather than delay the ultimate resolution of this case any further by requiring Hoskins to re-file an amended complaint in a manner that complies with the local rules, the court will grant leave for Hoskins to amend his complaint via his Motion to Amend the Complaint. Given the fact that Hoskins' claim against Officer Chamberlain is identical to his claim against Officer Buboltz, Hoskins' allegations, taken as true as is required at this stage, are sufficient to state a claim for cruel and unusual punishment against Officer Chamberlain for the same reasons stated in the court's prior screening order. *See* ECF No. 36 at 3–4.

IT IS THEREFORE ORDERED that Hoskins' Motion to Amend the Complaint (ECF No. 54) is **GRANTED** and Hoskins' Motion to File an Amended Complaint (ECF No. 55) is **DENIED**.

IT IS FURTHER ORDERED that Officer Chamberlain be added to this case as a defendant.

IT IS FURTHER ORDERED that the United States Marshal shall serve a copy of Hoskins' first amended complaint (ECF No. 35), Hoskins' Motion to Amend the Complaint (ECF No. 54), and this order upon Officer Chamberlain of the Waukesha County Sheriff's Department pursuant to Federal Rule of Civil Procedure 4. Plaintiff is advised that Congress requires the U.S. Marshals Service to charge for making or attempting such service. 28 U.S.C. § 1921(a). The current fee for waiver-of-service packages is \$8.00 per item mailed. The full fee schedule is provided at 28 C.F.R. §§ 0.114(a)(2), (a)(3). Although Congress requires the court to order service by the U.S. Marshals Service precisely because *in forma pauperis* plaintiffs are indigent, it has not made any provision for these fees to be waived either by the court or by the U.S. Marshals Service.

IT IS FURTHER ORDERED that Officer Chamberlain shall file a responsive pleading to the amended complaint (ECF No. 35) and the allegations contained in Hoskins' Motion to Amend the Complaint (ECF No. 54).

IT IS FURTHER ORDERED that copies of this order be sent to the officer in charge of the agency where the inmate is confined.

IT IS FURTHER ORDERED that once all Defendants have filed an answer, the Clerk shall enter a scheduling order setting the deadline for discovery six months after all Defendants have filed an answer and the deadline for dispositive motions 30 days thereafter.

SO ORDERED this 24th day of October, 2018.

s/ William C. Griesbach
William C. Griesbach, Chief Judge
United States District Court